necessary to attract national advertisers, making the enormous investment in programming economically viable and worthwhile.

The fact that their owned stations need a supply of high quality programs encourages networks to invest in programming that also benefits their other affiliates, including those in markets too small to make a meaningful economic difference to the network in terms of national audience or advertising revenues. In short, station ownership provides networks with an incentive to stay in the broadcast network business, and supports the level and scope of network program service on which the public and independently-owned affiliated stations rely.

C. The National Multiple Ownership Rule Should Be Repealed Or Substantially Relaxed

Application of competition policy principles to the national ownership rule reveals that the rule is unnecessary to protect either competition or diversity. Therefore the rule should be repealed. If the Commission decides only to relax the rule, the extent of deregulation should be substantial. NBC's specific proposals are as follows:

- The national limit on the number of stations one entity can own has no rational legal or policy basis and should be eliminated, as the Commission has proposed.

- The television household coverage limit should be raised to at least 50%. If the Commission wants to phase-in this increase, it should do so at a much faster rate than is proposed in the FNPRM. Fifteen years is an eternity in the dynamic and increasingly competitive television marketplace. The Commission does not need such an extended period to monitor the effects of relaxing the rule on competition and diversity. NBC therefore proposes that the cap increased to 35% for a period of one year and then to 50%.

V. COMPETITION POLICY ANALYSIS OF THE LOCAL OWNERSHIP RULE DEMONSTRATES THAT IT CAN BE SUBSTANTIALLY RELAXED WITH NO HARM TO COMPETITION OR DIVERSITY

A. The Duopoly Rule Can Be Modified To Permit Grade B Overlaps And Many Grade A Overlaps With No Risk To Competition

Competition policy principles also support a substantial relaxation of the local ownership, or duopoly rule. The current rule is a blanket prohibition which presumes it is improper for one firm to own two stations with overlapping Grade B Contours. The rule does not allow for any analysis of local conditions, efficiencies, entry barriers, or competitive effects associated with specific acquisitions. Competition policy principles would take these factors into account, and application of those principles clearly demonstrates that the Grade B overlap test is on its face overly restrictive. Common ownership of many stations with Grade A overlaps could also be permitted without any threat to competition.

The Commission has correctly determined that the record supports decreasing the prohibited overlap from Grade B to Grade A. FNPRM at par. 116-117. The Economic Analysis confirms that stations in different DMAs simply do not compete with each other for advertising revenues or programming. It also demonstrates that stations with only Grade B overlaps are unlikely to have enough potential viewers in common to be considered competitors for audience. Economic Analysis, Appendix B.

NBC submits that a single owner should also be permitted to acquire up to two television stations with overlapping Grade A Contours where one of the stations is a UHF, unless the Commission finds the combination would cause demonstrable harm to competition or diversity in the affected local market.[14]

NBC believes the preferable regulatory approach to evaluating acquisitions of two stations in the same DMA is case

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[14] We believe the appropriate geographic market is the DMA, rather than each Grade A Contour, because the DMA definition attempts to capture actual television viewership, advertising sales and program acquisition patterns. Moreover, it permits a more consistent definition of geographic market than one that changes depending on the stations at issue.

by case, with an examination and analysis of the particular competitive characteristics of the market in question. At a minimum, the Commission should make clear that it will permit common ownership of two stations in the same market (where one station is a UHF) so long as at least six other station owners remain in the DMA after the acquisition (i.e., so that the market will still have at least seven different station owners). This "safe harbor" is based on the most conservative approach to the relevant market definition, and assumes that it is limited only to commercial television stations.[15] Where at least seven separate station owners serve a given DMA, that DMA will not exceed the moderately concentrated level, even if some owners have two stations.[16] In such markets the ownership of two stations by a single owner will not be presumptively anti-competitive.

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[15] The FNPRM notes that the Merger Guidelines would permit mergers so long as ten independent suppliers remained. However, the antitrust enforcement agencies would in all likelihood include other competitors, such as cable, MMDS, DBS and home video, and public television in the relevant market, so that these ten suppliers would include more than just commercial television stations. However, as described in the text, NBC's proposal takes a more conservative approach and only includes commercial broadcasters.

[16] For example, if a DMA has three station owners (each with two stations) and four other station owners (each with one station) the HHI is 1600. If there are two station owners with two stations each, and five station owners with one station each, the HHI is 1573. If there is one station owner with two stations and six owners with one station each, the HHI is 1561.

Consistent with the policies embodied in the Merger Guidelines and the goal of stopping market power "in its incipiency," there should be no categorical prohibition against local station acquisitions unless such acquisitions are deemed to be "presumptively" anticompetitive.[17] As noted above, acquisitions in unconcentrated and moderately concentrated markets are in most circumstances viewed as benign and are not presumed to have anticompetitive effects. Even where a presumption is triggered, however, the particular characteristics of the market in question must be examined to determine whether the proposed acquisition would actually be anticompetitive.

The analysis of five illustrative cities contained in the Economic Analysis demonstrates that larger markets tend to be unconcentrated or moderately concentrated, so allowing common ownership of two stations in those markets, particularly where one of the stations is a UHF, should raise no competitive concerns. Even under the conservative "safe harbor" test proposed above, duopolies could be permitted in all but 3 of the Top 25 markets without exceeding the "moderately concentrated" level or posing any threat to competition (See Attachment A). In smaller markets some measures of market concentration may reach

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[17] As discussed above, to the extent the local ownership rule is designed to prohibit monopolies, it should only ban an owner from acquiring a 50%-70% share of any relevant market. Similarly, without at least a 30% to 50% market share, no firm can be liable for "attempting to monopolize" a market.

the highly concentrated level. However, joint ownership of two UHF stations or a VHF/UHF combination are still unlikely to have anticompetitive consequences. When the other factors that comprise competitive analysis under the Merger Guidelines are applied, it may be clear that anti-competitive conduct is highly unlikely because, as discussed in the Economic Analysis, collusion and coordinated action among competitors would be extremely difficult.

Moreover, the Commission should not prohibit common ownership of stations whose Grade A Contours overlap unless an analysis of the particular market demonstrates that competition and diversity would actually be harmed, and that any reduction of competition or diversity would be more costly in terms of consumer welfare than the benefits of joint ownership. Those benefits might be substantial.[18] If the UHF station(s) involved in the proposed transaction is weak, it would benefit from the cost savings, economies of scale and efficiencies of shared resources and personnel. These benefits would translate into a stronger, more competitive UHF outlet.

Even in those cases where a UHF station is on solid financial ground, common ownership with a co-located VHF or UHF might enable the station to provide better and more diverse

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[18] Economic Analysis at 64-75.

program service to the community. For example, the second UHF outlet might be used to more fully utilize newsgathering and local programming resources, resulting in an increase in the locally-produced news and public affairs programming available in the community. Other business arrangements between the co-located stations might lead to innovative new programming or public service campaigns. These more innovative approaches to programming and community service, coupled with the cost efficiencies that can be achieved through common ownership, would make both stations more competitive over the long term.

The Commission should also be able to waive continuing restrictions on VHF/VHF combinations on a case-by-case basis if the applicant can demonstrate that there is no risk of anticompetitive consequences or loss of diversity.

As competition from new video outlets increases (many of which are under common ownership), local television broadcasting will become a more economically fragile business. Allowing common ownership of more than one station in a DMA will give local broadcasters a way to maintain their competitive strength in the face of new competition, without diminishing competition or diversity in the local marketplace.

B. Substantial Relaxation of the Duopoly Rule Would Not Have An Adverse Impact On Diversity

For the reasons discussed above, NBC submits that application of competition policy principles to proposed duopolies will ensure adequate diversity of outlets and viewpoints in local markets. Before those principles can be rationally applied, the Commission must abandon the traditional approach of measuring diversity only by reference to the number of local television stations. This approach completely ignores the realities of the marketplace and consumer behavior.

As noted in the FNPRM, the totality of sources of information and viewpoints available from local video outlets alone has increased dramatically in recent years. Not only has the number of television stations multiplied, but nearly all viewers now have access to cable, direct broadcast satellites, and wireless cable. The telephone companies will soon add hundreds of new video channels to the local market. And current plans for advanced television will double the number of over-the-air broadcast stations available to local audiences.

But diverse information and viewpoints are not available to the public only from video media. As discussed at length in the Economic Analysis, when it comes to viewpoint diversity, as opposed to competition in various economic markets, there is no justification for excluding virtually any media source of viewpoints available to the public, including all forms of video (cable, DBS, MMDS, public television, video cassettes), radio, print (newspapers, magazines and books), computer networks and theatrical movies. There is no justification for not "counting" a source of expression because it is not "free," not in a news or public affairs format, not video, not subject to public interest obligations, not as "immediate" as broadcast television, or not as popular as television. Economic Analysis, Section V.

Any evaluation of whether relaxation of the duopoly rule would diminish diversity of viewpoints must take these other sources of viewpoints into account. As the Commission itself acknowledges in the FNPRM, "... the American public can receive home delivered video programming from a variety of outlets [and]...it makes less and less sense to regulate a market on the grounds of ensuring diversity, without taking into account whether there is an available diverse array of non-broadcast media." (par. 54).

Examining the effect on diversity of the changes NBC has proposed in the duopoly rule, it is clear that (1) the Grade B Contour overlap prohibition can be eliminated without any adverse impact on diversity, and (2) a single entity should be allowed to own two stations with Grade A Contour overlaps (or common ownership of two stations in the same DMA) if one of the stations is a UHF.[19]

Since stations with overlapping Grade B Contours serve different local markets, and therefore offer their respective viewers different local news programming, common ownership of those stations will not result in a loss of diversity in either market, or to those viewers in the overlap area that have access to both stations. In terms of Grade A Contour overlaps in the same DMA, we believe a case-by-case analysis of the market consistent with competition policy would prevent any common ownership on competition grounds long before diversity was threatened. The seven owner "safe harbor" standard we have proposed limits the analysis to the narrowest possible market -- only commercial television stations -- and then ensures that even those viewers that do not take advantage of any other viewpoint source would have at least seven independently-owned over-the-air television choices.

We believe that these proposed modifications to the duopoly rule achieve the proper balance between increasing the competitiveness of television broadcasters and preserving the level of diverse ownership the Commission believes the public interest requires.

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[19] The Commission should be willing to waive restrictions against common ownership of two VHF stations if it can be demonstrated there would be no adverse effect on local diversity of viewpoints.

C. Local Marketing Agreements

NBC supports the Commission's proposal to treat Local Marketing Agreements (LMA's) for television stations in the same basic manner as it treats radio. Specifically, if a station time-brokers more than 15% of a co-located television station's weekly broadcast hours, the brokered station would count toward the brokering station's national and local ownership limits. However, in determining whether those limits have been violated, we are hopeful that the Commission will be operating in an environment where (1) the national ownership rule has been eliminated, and (2) duopoly prohibitions are enforced only in those markets where it can be demonstrated that competition and diversity would be affirmatively harmed.

VI. CONCLUSION

When the Commission's television station ownership rules are assessed according to the principles and standards of competition policy, it is clear that they are not necessary to protect viewers, advertisers or program suppliers from market power or undue concentration of economic control. Application of these principles and standards to proposed station acquisitions would also protect the public against any meaningful loss of diversity.

Therefore, NBC urges the Commission to eliminate and or modify its television station ownership rules as proposed in these Comments.

Respectfully submitted,

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ATTACHMENT A

NUMBER OF COMMERCIAL TV STATIONS LICENSED TO TOP 25 MARKETS

1.	New York	15
2.	Los Angeles	21
3.	Chicago	14
4.	Philadelphia	16
5.	San Francisco	18
6.	Boston	15
7.	Washington, D.C.	9
8.	Dallas	15
9.	Detroit	8
10.	Atlanta	10
11.	Houston	13
12.	Seattle	13
13.	Cleveland	12
14.	Minneapolis	12
15.	Tampa	11
16.	Miami	14
17.	Pittsburgh	6
18.	Denver	15
19.	Phoenix	10
20.	St. Louis	7
21.	Sacramento	9
22.	Orlando	10
23.	Baltimore	6
24.	Indianapolis	10
25.	Portland	8